



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DWAYNE GILMORE, et al.,

Plaintiffs,

-against-

THE CITY OF NEW YORK,

Defendant.

19-CV-6091 (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

On February 17, 2021, the parties in this Fair Labor Standards Action filed a joint motion for approval of their prior settlement agreement (the Original Agreement) (Dkt. No. 89-1) pursuant to *Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199, 206 (2d Cir. 2015). (Dkt. No. 89.) By order dated March 5, 2021 (March 5 Order) (Dkt. No. 93), the Court found that the parties' Original Agreement, which contained a narrow release and no confidentiality or non-disparagement clause, achieved a robust recovery for the plaintiffs, but denied approval of the agreement based on two areas of concern: (1) plaintiffs' counsel would collect a fee that was more than twice the amount contemplated by their retainer agreements (and three times the amount going to their clients), despite plaintiffs not achieving "complete success" on their claims, as calculated by their counsel; and (2) plaintiffs' counsel sought out-of-pocket expenses in the amount of \$20,005.89, but only provided evidence of expenses amounting to \$18,570.79. March 5 Order at 2 n.2, 4, 11.

The parties have, in compliance with the March 5 Order, negotiated a new settlement agreement (the Revised Agreement) (Dkt. No. 94-1), which is substantially similar to the Original Agreement but increases the percentage of the proceeds flowing to plaintiffs and decreases the percentage flowing to their counsel, such that plaintiffs are now achieving complete success on

their claims, as calculated by their counsel. Additionally, counsel have corrected the discrepancy relating to their claimed out-of-pocket expenses. (*See* Dkt. No. 94.)

Under the Revised Agreement, defendants will pay a total of \$332,178.73 to settle the claims of plaintiffs Gilmore, Sykes, Thomas, and Sosa. Rev. Ag. ¶ 2.1. Of that sum, \$18,570.79 will go to plaintiffs' counsel for reimbursement of litigation expenses, *id.* ¶ 2.1(b)(iii), leaving a net settlement amount of \$313,607.94. The four settling plaintiffs will receive \$81,556.24 of that amount, allocated as set forth in Exhibit A to the Revised Agreement, while \$232,051.70 will be paid to plaintiffs' counsel for their fees. *Id.* ¶ 2.1(a)-(b).

The Revised Agreement resolves the Court's concerns. Accordingly, it is hereby ORDERED that the Revised Agreement is APPROVED as fair and reasonable and this action is DISMISSED with prejudice.

The Clerk of Court is respectfully directed to terminate the case.

Dated: New York, New York
March 24, 2021

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge